



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

MAY 10 2012

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Clean Earth of North Jersey, Inc  
115 Jacobus Avenue  
Kearny, New Jersey 07032  
Attn: Robert Fixter, Vice President

Re: Notice of Unacceptability and Opportunity for Informal Conference Pursuant to Section 121(d)(3) of Comprehensive Environmental Response, Compensation, and Liability Act and 40 C.F.R. Section 300.440(d)

Dear Sir:

Section 121(d)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended, (CERCLA), 42 U.S.C. § 9621(d)(3), requires that in the case of any removal or remedial action implemented under CERCLA, any hazardous substance or pollutant or contaminant may only be transferred to a facility operating in compliance with the Resource Conservation and Recovery Act (RCRA) or other applicable federal law and state requirements. The section further prohibits the transfer of CERCLA wastes to a land disposal facility that is releasing contaminants into the environment. These requirements are reflected in the Off-Site Rule, set forth in the National Contingency Plan (NCP), at 40 C.F.R. Section 300.440. The purpose of the Off-Site Rule is to prevent wastes from CERCLA response actions from contributing to present or future environmental problems. Compliance with the Off-Site Rule ensures that CERCLA wastes are directed to management units determined to be environmentally sound and deemed acceptable by the U.S. Environmental Protection Agency (EPA).

On or about March 6, 2012, EPA received information from the New Jersey Department of Environmental Protection (NJDEP) Bureau of Hazardous Waste Compliance and Enforcement regarding the issuance of a Notice of Violation (NOV) to your company, Clean Earth of North Jersey, Inc. (Clean Earth). According to this information, on October 24, 2011, NJDEP issued Clean Earth a NOV for failure to comply with all conditions of its state permit under NJAC 7:26G 1.1 et seq., and 40 C.F.R. Section 270.30(a). Based on the specific acts and violations at the Clean Earth facility stated in NJDEP's NOV (enclosed), EPA has determined that these violations are relevant pursuant to the Off-Site Rule, 40 C.F.R. Section 300.440(c).

By this letter, pursuant to 40 C.F.R. Section 300.440(d), EPA informs you that your facility does not satisfy the Off-Site Rule regulations and provides you with notice of EPA's determination of unacceptability. Please note, under 40 C.F.R. Section 300.440 (d)(3), a facility may continue to

receive CERCLA waste for 60 calendar days after the date of issuance of the notice, unless otherwise determined in accordance with paragraphs (d)(8) or (d)(9) of this section.

Under 40 C.F.R. Section 300.440(d)(4), the facility owner/operator has an opportunity to submit a written request for an informal conference with EPA to discuss the basis for the underlying violations and its relevance to the facility's acceptability to receive CERCLA cleanup wastes. Accordingly, if Clean Earth wishes to have such a conference, it must submit such a written request within ten (10) calendar days from the date of this notice. If requested, EPA will provide Clean Earth with the opportunity for a conference no later than thirty (30) calendar days after the date of this notice, if possible. Clean Earth may also submit written comments by the 30th day after issuance of this notice, in addition to or instead of requesting an informal conference.

Please note that the failure to submit a written request for an informal conference or submit written comments specifically addressing this unacceptability determination within the timeframes specified above, may result in Clean Earth's loss of its current acceptability status on the 60th day after this notice is issued (See 40 C.F.R. Section 300.440(d)(5)). If Clean Earth presents information, either by means of the informal conference or written comments, EPA will inform you in writing of its determination of whether or not this notice of unacceptability will be reversed.

If this determination of unacceptability has not been reversed, under 40 C.F.R. § 300.440(d)(7), Clean Earth may request a reconsideration by the Regional Administrator of the unacceptability determination within ten (10) days of receiving EPA's written response. This reconsideration, if granted, will be made by review of the record, by conference, or by other means deemed appropriate by the Regional Administrator. However, reconsideration does not automatically stay the determination beyond the 60-day period. Clean Earth will receive notice in writing of the decision of the Regional Administrator.

If you have questions regarding the above, please contact Beckett Grealish, EPA Region 2's Off-Site Contact, at (732) 321-4341 or via email at [Region2.OSR@epa.gov](mailto:Region2.OSR@epa.gov). You may also have your legal representative contact Elizabeth Leilani Davis in EPA's Office of Region Counsel at (212) 637-3249.

Sincerely,

A handwritten signature in blue ink, appearing to read "Walter E. Mugdan", is written over the typed name.

Walter E. Mugdan, Director  
Emergency and Remedial Response Division

Enclosure

cc: Jeffrey Sterling, NJDEP

NOTICE OF VIOLATION Attachment

EXPLANATION OF THIS NOTICE (additional pages 1 of 1)

Site Name Clean Earth of North Jersey (CENTJ) Date 10/24/11

In accordance with the Grace Period Law, the Department will not assess a penalty against you for the violations marked with an asterisk \* below, if you take voluntarily action to address and correct these violations within the time periods indicated on CORRECTIVE ACTION PAGE(S).

ADDITIONAL VIOLATION(S):

Subject: \_\_\_\_\_

Citation: 40 CFR 270.30(a)

Description of Noncompliance: Specifically, (1) CENTJ failed to comply with Citation #60 of permit #HWPO5002 by not complying with all of the regulations and applicable statutes of the NJDEP by CENTJ's failure to abide by the Licensing Requirements of N.J.A.C. 7:28-4.1(b) when CENTJ accepted & managed "solid waste" that contained diffuse naturally occurring or diffuse accelerator products of radioactive materials, including technologically enhanced naturally occurring radioactive material (defined at N.J.A.C. 7:28-1.4); and

☐ violation immediately above corrected at time of issuance

Subject: \_\_\_\_\_

Citation: \_\_\_\_\_

Description of Noncompliance: \_\_\_\_\_

(2) CENTJ accepted, processed and arranged for the off site disposition of radioactively contaminated solid waste that contained a combination of Radium-226 and Radium-228 at a concentration above 0.5 pCi/g dry wt above background. (NJDEP sample result from sample MS002 taken on 8/10/11 was 8.59 pCi/g.)

☐ violation immediately above corrected at time of issuance

Subject: \_\_\_\_\_

Citation: \_\_\_\_\_

Description of Noncompliance: \_\_\_\_\_

☐ violation immediately above corrected at time of issuance

Subject: \_\_\_\_\_

Citation: \_\_\_\_\_

Description of Noncompliance: \_\_\_\_\_

☐ violation immediately above corrected at time of issuance

issuer's initials

*[Handwritten initials]*

rec'd by initials

*[Handwritten initials]*

ATTACHMENT  
F

New Jersey Department of Environmental Protection  
Bureau of Hazardous Waste Compliance and Enforcement  
NOTICE OF VIOLATION

|                        |
|------------------------|
| File #                 |
| PI # <u>ND99129105</u> |

Program Interest: Clean Earth of North Jersey Site Address: 115 Jacobus Ave.  
Municipality: Keansburg County: Hudson Zip: 07032  
Person Interviewed: Robert Fixter Title: General Manager

On 10/24/11 a representative from the NJDEP Bureau of Hazardous Waste Compliance and Enforcement (BHWCE) conducted a compliance evaluation of the above Program Interest. This NOTICE is issued based on facts observed by or known to the Department's representative issuing this NOTICE, to warn you that a violation(s) of the Statutes and Rules checked below has been found:

- ☒ Solid Waste Management Act N.J.S.A. 13:1E-1 et seq. and rules at N.J.A.C. 7:26 - 1 et seq. and/or N.J.A.C. 7:26A-1 et seq.  
and/or N.J.A.C. 7:26G-1 et seq.  
☐ Spill Compensation and Control Act N.J.S.A. 58:10-23.11 et seq. and rules at N.J.A.C. 7:1E-1 et seq.

**EXPLANATION OF THIS NOTICE** - Violations with citation(s) to the specific Rules issued under the above checked Statutes:

40 CFR 270.30(a) Failure to comply with all conditions of the permit

- ☐ Violation above corrected at time of issuance ☒ See additional      (#) pages of **EXPLANATION OF THIS NOTICE**

**PURPOSE OF THIS NOTICE** - This is intended to serve as a NOTICE to you, to warn you of the above violations, in order to 1) provide you with an opportunity to voluntarily investigate the matter and, voluntarily take corrective action to address the identified violation(s) and 2) identify those violations, and time periods, pursuant to the Grace Period Law, N.J.S.A. 13:1D-125 et seq. where your voluntary action can prevent formal enforcement orders and penalties issued by the Department (see violations marked with an asterisk \*). This NOTICE does not constitute a formal enforcement order, a final agency action or a final legal determination that a violation has occurred. Therefore, this NOTICE may not be appealed or contested.

Neither the issuance of this NOTICE nor any corrective actions taken by you to address the violation(s) cited, precludes the State of New Jersey or any of its agencies from initiating future enforcement action (including issuance of a formal enforcement order and the assessment of penalties) with respect to the violations listed above or for any other violations. In the event the Department determines to pursue future formal enforcement action, you will then be provided with an opportunity to appeal or contest such action.

**RESPONDING TO THIS NOTICE** - Voluntary corrective actions taken in response to this NOTICE can affect the Department's determination on the need for or severity of any potential future enforcement action in this matter. In accordance with the Grace Period Law, the Department will not assess a penalty against you for the violations marked with an asterisk \* above, if you take voluntary action to address and correct these violations at the time of issuance, or within the time periods indicated in this NOTICE. For violations identified in this NOTICE that are not subject to the Grace Period Law, the Department may consider any voluntary actions you take in response to this NOTICE as part of its determination 1) on whether to initiate future formal enforcement action for this site/matter and, 2) on the amount of any penalty that may be assessed in future enforcement actions. Please see items checked below regarding actions you may voluntarily undertake to address violations identified in this NOTICE:

**CORRECTIVE ACTION PAGE(S)** - The Corrective Action Page(s) outlines the timeframes pursuant to the Grace Period Law during which you may voluntarily take action to come into compliance. Depending on the nature of violations cited in this NOTICE, corrective action or compliance assistance recommendations for violations that are not subject to the Grace Period Law may also be outlined on this form

- ☐ Not Provided for this Notice  
☒ See additional      (#) attached pages

**COMPLIANCE RESPONSE FORM** - Submission of a Compliance Response Form if checked below is voluntary. Completed forms should be sent to the Department contact indicated at the bottom of this NOTICE.

- ☐ Not Applicable  
☒ If received within      days of receipt it will preserve your protection from penalty under Grace Period Law.  
☒ If received within 30 days of receipt, it will be considered in potential future Department action regarding the violations cited

**FOR QUESTIONS REGARDING THIS NOTICE**, please contact the Department representative issuing this NOTICE at the location indicated::

- |   |  |   |
|---|--|---|
| <input type="checkbox"/> Central Field Office<br>P.O. Box 407, Trenton, NJ 08625-0407<br>Tel. (609) 584-4250 FAX (609) 588-2444 | <input checked="" type="checkbox"/> Northern Field Office<br>7 Ridgedale Ave., Cedar Knolls, NJ 07927-1112<br>Tel. (973) 656-4470 FAX (973) 631-6331 | <input type="checkbox"/> Southern Field Office<br>One Port Center, 2 Riverside Dr., Suite 201<br>Camden, NJ 08103<br>Tel. (856) 614-3658 FAX (856) 614-3608 |
|---|--|---|

Issued by: Martin E. Sanchez Date: 10/24/11 Signature: [Signature]  
Received by (print): Robert Fixter Date: 10/24/11 Signature (receipt only): [Signature]



New Jersey Department of Environmental Protection

NOTICE OF VIOLATION Attachment  
CORRECTIVE ACTION PAGE ( 1 of 1 )

Site Name Clean Earth of North Jersey Date 10/24/11

Corrective Action: Obtain 1st Obtain license from the Department (as per N.J.A.C. 7:28-4.1(b)) prior to accepting radiactively contaminated solid waste containing a combination of Ra-226 & Pa-231 above 5 pCi/g dry wt.  
by 11/24/11 (date) OR \_\_\_\_\_ calendar day(s) from \_\_\_\_\_

Corrective Action: \_\_\_\_\_

by \_\_\_\_\_ (date) OR \_\_\_\_\_ calendar day(s) from \_\_\_\_\_

Corrective Action: \_\_\_\_\_

by \_\_\_\_\_ (date) OR \_\_\_\_\_ calendar day(s) from \_\_\_\_\_

Corrective Action: \_\_\_\_\_

by \_\_\_\_\_ (date) OR \_\_\_\_\_ calendar day(s) from \_\_\_\_\_

Additional recommendations or compliance assistance information:

issuer's initials 3/21 rec'd by initials 8

receive CERCLA waste for 60 calendar days after the date of issuance of the notice, unless otherwise determined in accordance with paragraphs (d)(8) or (d)(9) of this section.

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Walter E. Mugdan, Director  
Emergency and Remedial Response Division

Enclosure

cc: Jeffrey Sterling, NJDEP



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Name: CleanEarthofNorth Jersey Init: ss Date: 04/20/12 Filename: Clean Earth Of North Jersey DNotice Letter

| Symbol  | ERRD-RAB     | ERRD-RAB | ERRD-RAB | ORC-NYCSB | ORC-NYCSB | ORC-NYCSB | ERRD-DD  | ERRD-D  |  |
|---------|--------------|----------|----------|-----------|-----------|-----------|----------|---------|--|
| Surname | GREALISH     | PAN      | ROLOLA   | DAVIS     | CAPON     | LIEBER    | LAPADULA | MUGDAN  |  |
| Date    | 6.6. 4/20/12 | 4/20/12  | 4/23/12  | 5/8/12    | 5/8/12    | 5/10/12   | 5/10/12  | 5/10/12 |  |